Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:MCT:PHI:TL-N-3041-01
JRGilbert

date:

JUN 15 2001

from: Associate Area Counsel (LM:MCT) - Philadelphia

subject:

- Extension of Statute of

Limitations - Forms 872

DISCLOSURE STATEMENT

This memorandum may contain privileged information. Any unauthorized disclosure of this memorandum may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

DISCUSSION

This memorandum responds to your request for assistance of May 9, 2001. This memorandum should not be cited as precedent. You have requested our advice regarding the correct captions for Forms 872, Consent To Extend The Time To Assess Tax, for tax returns concerning the consolidated group.

ISSUE

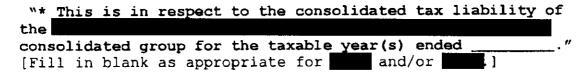
How should the taxpayer be identified on the Forms 872 or 872-A to be executed to extend the statute of limitations for assessment?

CONCLUSION

For the and consolidated returns, any Forms 872 or 872-A should be prepared in the name of "successor by merger to"

Additionally, at the bottom of the first page of the Form

872 (or Form 872-A), add the following language:



In addition, we recommend having an officer of signature, sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

[name of current officer]
[title of officer]

Please also note that for all years, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

FACTS

Revenue Agent Raymond Woodruff is examining the consolidated Forms 1120 filed by ("") for calendar years and . As the consolidated Form 1120 was filed on . , the three year statute of limitation on assessment per I.R.C. § 6501(a) expires on

You have been informed by the taxpayer that on

was acquired by

a wholly owned subsidiary of

is the
highest tier domestic corporation of
corporation, and it regularly files a consolidated return on
behalf of its domestic subsidiaries.

On was merged into

ANALYSIS

The common parent of a consolidated income tax is the proper party to extend the statute of limitations on behalf of itself and the consolidated group, in accordance with Treas. Reg. \$ 1.1502-77, and it remains so as long as it remains in existence.

Temporary Treas. Reg. § 1.1502-77T(a)(4)(ii) provides that a successor to a former common parent that has ceased to exist can act as an alternative agent for the old consolidated group.

Tì	ne facts	in the	instant	case	indi <u>cate</u>	that	the	common			
parent	for the		group in	n_	and	, did	not	survive	the		
merger with											
					stence. A			ly, any	Forms		
872 or	872-A fo	or the	co	onsoli	dated reti	irns i	for	and			
should	be prepa	ared in	the nar	ne of '	'						
, successor by merger to											
		1.									

Additionally, at the bottom of the first page of the Form 872 (or Form 872-A), add the following language:

" ★	This	is	in	resp	ect	to	the	cons	olida	ıted	tax	liak	ility	of	•
the													•		
cons	solida	ated	i gi	roup	for	the	taz	cable	year	(s)	ende	ed			"
	[Fi]	ll i	in k	olank	as	app	rop	riate	for		and	d/or			

In addition, we recommend having an officer of sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

[name of current officer]
[title of officer]

This concludes our advice and recommendation. Our advice is subject to the Office of Chief Counsel's ten day post-review procedures. If the Office of Chief Counsel alters or revises our advice, they will contact us within ten working days from their receipt of our advice. We therefore recommend that before issuing the Forms 872 to the taxpayer, you wait until the ten day period expires and we confirm that no alterations or revisions

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were made to our proposed advice. Please feel free to call Attorney John R. Gilbert at 215-597-3442 with any additional questions you may have.

JAMES C. FEE, JR. Associate Area Counsel (LMSB)

cc: (via email only)
 Division Counsel (LMSB) [TSS4510]
 Harve Lewis, Senior Litigation Counsel (HQ) (CC:LM:MTC:SLC)